APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Civil No. 2145

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, et al., *Plaintiffs*,
v.
JOHN C. MOE, et al., *Defendants*.

Memorandum

Before: BROWNING, *Circuit Judge*, and SMITH and JAMESON, *District Judges*

PER CURIAM:

The defendants have objected to the inclusion of paragraph 3 in the judgment proposed by plaintiffs. In turn plaintiffs have moved the court to add subparagraph 1(e). The subject matter of these provisions was not specifically presented or considered by the court.

The court recognizes, as suggested in plaintiffs' memorandum in support of their motion to add subparagraph 1(e) and prior briefs of both parties, that its holding will result in complicated problems of enforcement by the State of Montana. The court and all counsel, however, have recognized that this is a test case. We think it preferable to await a final ruling of the Supreme Court on the validity of the cigarette excise tax imposed by the State of Montana with respect to sale to both Indians and non-Indians before attempting to resolve the enforcement problems. Obviously the solution will depend upon the Court's holding on the validity of the tax. If the parties are then unable to agree upon the subject matter of the proposed provisions, they may be resolved in appropriate proceedings in which all parties will have an opportunity to pre-

sent evidence and their views on proposed enforcement procedures.

Accordingly we have concluded that with this understanding plaintiffs proposed paragraph 3 and subparagraph 1(e) should not be included in the judgment.

Plaintiffs have agreed that paragraph 2 may be modified as proposed by counsel for defendants State of Montana and William A. Graff, Acting Director of the Department of Revenue. Inasmuch as both parties prevailed in part, the judgment has been modified to provide that each party will bear his or its own costs.

Done and dated March 19, 1975.

/s/ JAMES R. BROWNING
James R. Browning
United States Circuit Judge
/s/ WILLIAM J. JAMESON
William J. Jameson
United States District Judge
/s/ RUSSELL E. SMITH
Russell E. Smith
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

(Caption omitted in printing)

Notice of Appeal

(Filed May 16, 1975)

Notice is hereby given that all plaintiffs named in the caption set forth above, except Joseph Anthony Wheeler, Jr. (who is deceased), hereby appeal to the Supreme Court of the United States from that portion of the final judgment of a three-judge district court entered in this action on the 19th day of March, 1975, that

> (1) Denied plaintiffs' motion for summary judgment and granted defendants' motion for summary judgment to the extent that defendants could require plaintiffs and other tribal members who sell cigarettes on the Flathead Reservation, Montana, to precollect the Montana state cigarette tax imposed on non-Indian purchasers pursuant to Chapter 56, Title 84, R.C.M. 1947, and regulations promulgated by those statutes; and
>
> (2) Consequently denied to plaintiffs, as requested in their complaint and motion for summary judgment, permanent injunctive relief restraining defendants from imposing any requirements of Chapter 56, Title 84, R.C.M. 1947, and regulations promulgated by those statutes, upon plaintiffs or other tribal members who sell cigarettes on the Flathead Reservation to non-Indians, such denial of permanent injunctive relief being a resolution by the court of the merits of plaintiffs' constitutional claims.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: May 8, 1975

Respectfully submitted,

/s/ Richard A. Baenen
Richard A. Baenen
1735 New York Avenue, N.W.
Washington, D.C. 20006

/s/ Victor F. Valgenti
Victor F. Valgenti
212 First Federal Building
Missoula, Montana 59801

Wilkinson, Cragun & Barker
R. Anthony Rogers
Alan I. Rubinstein
Of Counsel

(Certificate omitted in printing)